

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1099 be amended to read as follows:

- 1 Page 1, delete lines 1 through 9.
- 2 Page 3, between lines 14 and 15, begin a new paragraph and insert:
- 3 **""Department" means the department of homeland security**
- 4 **established under IC 10-19-2-1."**
- 5 Page 4, reset in roman line 36.
- 6 Page 4, line 37, reset in roman "commerce selling fireworks".
- 7 Page 4, line 37, after "fireworks" insert ".".
- 8 Page 6, line 28, delete ":".
- 9 Page 6, line 29, delete "(1)".
- 10 Page 6, line 29, delete ";" and insert ".".
- 11 Page 6, run in lines 28 through 29.
- 12 Page 6, delete lines 30 through 32, begin a new paragraph and insert:
- 13 **"SECTION 2. IC 22-11-14-2 IS AMENDED TO READ AS**
- 14 **FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The fire**
- 15 **prevention and building safety commission ~~may~~: shall:**
- 16 (1) adopt rules under IC 4-22-2 for the granting of permits for
- 17 supervised public displays of fireworks by municipalities, fair
- 18 associations, amusement parks, and other organizations or groups
- 19 of individuals; and
- 20 (2) establish by rule the fee for the permit, which shall be paid
- 21 into the fire and building services fund created under
- 22 IC 22-12-6-1.
- 23 (b) The application for a permit required under subsection (a) must:
- 24 (1) name a competent operator who is to officiate at the display;
- 25 (2) set forth a brief resume of the operator's experience;

(3) be made in writing; and

(4) be received with the applicable fee by the ~~office of the state~~
~~fire marshal~~ **division of fire and building safety** at least five (5)
business days before the display.

No operator who has a prior conviction for violating this chapter may
operate any display for one (1) year after the conviction.

(c) Every display shall be handled by a qualified operator approved
by the chief of the fire department of the municipality in which the
display is to be held. A display shall be ~~so~~ located, discharged, or fired
as, in the opinion of:

(1) the chief of the fire department of the city or town in which the
display is to be held; or

(2) the township fire chief or the fire chief of the municipality
nearest the site proposed, in the case of a display to be held
outside of the corporate limits of any city or town;

after proper inspection, is not hazardous to property or person.

(d) A permit granted under this section is not transferable.

(e) A denial of a permit by a municipality shall be issued in writing
before the date of the display.

(f) A person ~~who possesses, transports, or delivers~~ **may not possess,**
transport, or deliver special fireworks, except as authorized under this
section. ~~commits a Class A misdemeanor."~~

Page 6, delete line 42.

Page 7, delete line 1.

Page 7, line 2, delete "discharge location;" and insert "**trained and**
experienced in using consumer fireworks;".

Page 8, delete lines 9 through 42, begin a new paragraph and insert:
"SECTION 4. IC 22-11-14-4 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Nothing in
this chapter shall be construed to prohibit:

(1) any resident wholesaler, manufacturer, importer, or distributor
from selling:

(A) at wholesale fireworks not prohibited by this chapter; or

(B) **consumer** fireworks ~~not approved for sale in Indiana~~ if
they are to be ~~shipped directly out of state within five (5) days~~
~~of the date of sale, used:~~

(i) **on the property of the purchaser;**

(ii) **on the property of another who has given permission**
to use the consumer fireworks; or

(iii) **at a special discharge location as set forth in section**
3.5 of this chapter;

(2) the use of fireworks by railroads or other transportation
agencies for signal purposes or illumination;

(3) the sale or use of blank cartridges for:

(A) a show or theater;

(B) signal or ceremonial purposes in athletics or sports; or

(C) use by military organizations;

(4) the intrastate sale of fireworks not approved for sale in Indiana between interstate wholesalers;

(5) the possession, sale, or disposal of fireworks, incidental to the public display of Class B fireworks, by wholesalers or other persons who possess a permit to possess, store, and sell Class B explosives from the Bureau of Alcohol, Tobacco, ~~and~~ **Firearms and Explosives of the** United States Department of ~~the Treasury;~~ **Justice;** or

(6) the use of indoor pyrotechnics special effects material before an indoor or outdoor proximate audience.

(b) For the purposes of this section, a resident wholesaler, importer, or distributor, is a person who:

(1) is a resident of Indiana;

(2) possesses for resale ~~common~~ fireworks approved or not approved for sale in Indiana;

(3) is engaged in the interstate sale of ~~common~~ fireworks described in subdivision (2) as an essential part of a business that is located in a permanent structure and is open at least six (6) months each year; **and**

~~(4) sells common fireworks described in subdivision (2) only to purchasers who provide a written and signed assurance that the fireworks are to be shipped out of Indiana within five (5) days of the date of sale; and~~

~~(5) (4) has possession of a certificate of compliance issued by the state fire marshal under section 5 of this chapter.~~

~~(c) A purchaser may not provide a written and signed assurance that the fireworks purchased are to be shipped out of Indiana and then sell or use them in Indiana.~~

SECTION 5. IC 22-11-14-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.5. (a) A retailer may sell consumer fireworks from a tent under the following conditions:**

(1) The tent may not be larger than one thousand five hundred (1,500) square feet.

(2) There may be only one (1) tent for each registration granted under section 5(b)(3) of this chapter.

(3) The tent may not be located closer than one hundred (100) feet from a permanent structure.

(4) A vehicle may not be parked closer than twenty (20) feet from the edge of the tent.

(5) The tent must be fire retardant.

(6) The sales site must comply with all applicable local zoning and land use rules.

(7) Sales of fireworks may be made from the tent for not more than forty-five (45) days in a year.

(8) The gross weight of consumer fireworks in a tent, other than those set forth in section 8(a) of this chapter, may not

1 exceed one thousand five hundred (1,500) pounds of product.

2 (9) A retailer that legally operated a tent with a registration in
3 2005 may continue operation in a tent in 2006 and the
4 following years. A registration under section 5(b)(3) of this
5 chapter is required for operation in 2006 and following years.

6 (10) The retailer holds a valid registration under section
7 5(b)(3) of this chapter.

8 (b) This subsection does not apply to a retailer of fireworks who
9 conducts operations from a structure that complies with the
10 requirements for an H-3 building occupancy classification under
11 the Indiana building code adopted by the fire prevention and
12 building safety commission. A retailer may sell consumer fireworks
13 from a structure under the following conditions:

14 (1) The structure must be a Class 1 structure used for the sale
15 and storage of fireworks 1.4G (Class C common fireworks).

16 (2) The sales site must comply with all applicable local zoning
17 and land use rules.

18 (3) The gross weight of consumer fireworks in the structure,
19 other than those set forth in section 8(a) of this chapter, may
20 not exceed one thousand five hundred (1,500) pounds of
21 product.

22 (4) The structure may not exceed fifteen thousand (15,000)
23 square feet in total area unless the structure was in existence
24 and was registered under section 5(b)(3) of this chapter in
25 2005.

26 (5) The retailer holds a valid registration under section 5(b)(3)
27 of this chapter.

28 (6) A retailer that legally operated from a structure with a
29 registration in 2005 may continue in operation in the structure
30 in 2006 and the following years. A registration under section
31 5(b)(3) of this chapter is required for operation in 2006 and
32 following years.

33 (c) The state fire marshal or a member of the division of fire and
34 building safety staff shall, under section 9 of this chapter, inspect
35 tents and structures in which common fireworks are sold.

36 SECTION 6. IC 22-11-14-5 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The state fire
38 marshal shall remove at the expense of the owner, all stocks of
39 fireworks or combustibles possessed, transported, or delivered in
40 violation of this chapter.

41 (b) The state fire marshal shall stop the shipments and sale of
42 fireworks, novelties, and trick noisemakers unless, prior to shipment
43 into this state for sale, the manufacturer, wholesaler, importer, or
44 distributor of the fireworks, novelties, and trick noisemakers submits to
45 the state fire marshal:

46 (1) a complete description of each item proposed to be shipped
47 into Indiana;

- (2) a written certification that the items are manufactured in accordance with section 1 of this chapter; and
- (3) an annual registration fee of ~~one thousand~~ **seven hundred fifty dollars (\$1,000) (\$750) for the first location and an additional registration fee of seven hundred fifty dollars (\$750) for each other location from which consumer fireworks are to be offered for sale for use at a special discharge location. The registration fee shall be deposited in the fire and building services fund as set forth in IC 22-12-6-1(c).**

If upon inspection the state fire marshal finds that this chapter has been complied with, an annual certificate of compliance shall be issued to the manufacturer, wholesaler, importer, or distributor. An annual certificate of compliance **may not be applied for after June 15 of a year and** expires December 31 of the year ~~during in~~ which the certificate is issued. Each manufacturer, wholesaler, importer, or distributor must obtain a certificate of compliance. The certificate is not transferable. ~~except that~~ A retailer that offers the items for sale to the public is entitled to receive a certified copy of the certificate from the manufacturer, wholesaler, importer, or distributor from which the retailer purchases the items. A certified copy of the certificate of compliance must be posted in each location where the items are offered for sale to the public. If upon inspection the state fire marshal finds that this chapter has not been complied with, the state fire marshal shall refuse to issue a certificate of compliance and state the reasons for the refusal. A copy of the order denying the issuance of a certificate of compliance and the reasons shall be forwarded to the manufacturer, wholesaler, importer, or distributor. The state fire marshal may revoke any certificate of compliance issued to any manufacturer, wholesaler, importer, or distributor if the holder of the certificate has violated this chapter.

(c) All fireworks, novelties, and trick noisemakers shipped into Indiana, or manufactured and sold in Indiana, must have distinctly and durably painted, stamped, printed, or marked on the package, box, or container in which the items are enclosed the exact number of pieces in the container.

(d) It is unlawful for a manufacturer, wholesaler, importer, or distributor to sell at wholesale, offer to sell at wholesale, or ship or cause to be shipped into Indiana fireworks, novelties, or trick noisemakers unless the manufacturer, wholesaler, importer, or distributor has been issued and holds a valid certificate of compliance issued under subsection (b). This subsection applies to nonresidents and residents of Indiana.

SECTION 7. IC 22-11-14-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. **(a)** A person who violates ~~section 4(c)~~, **section 2(f), 4.5, 5(c), 5(d), 7, or 8(a), 8(c), 8(d), or 10** of this chapter commits a Class A misdemeanor.

(b) A person who ignites, discharges, or uses consumer

fireworks other than those described in section 8(a) of this chapter at a site other than:

- (1) a special discharge location;
- (2) the property of the person; or
- (3) the property of another who has given permission to use the consumer fireworks;

commits a Class C infraction. However, if a person commits an offense under this subsection not later than five (5) years after the date of the commission of a prior offense, the person commits a Class B infraction.

(c) A person commits a Class B misdemeanor if the person recklessly, knowingly, or intentionally uses consumer fireworks other than those described in section 8(a) of this chapter and the violation causes harm to the property of a person.

(d) A person commits a Class A misdemeanor if the person recklessly, knowingly, or intentionally uses consumer fireworks other than those described in section 8(a) of this chapter and the violation results in serious bodily injury to a person.

(e) A person commits a Class D felony if the person recklessly, knowingly, or intentionally uses consumer fireworks other than those described in section 8(a) of this chapter and the violation results in the death of a person.

(f) A person commits a Class D felony if the person knowingly fails to collect or remit the public safety fees due under section 14 of this chapter to the state.

SECTION 8. IC 22-11-14-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) A person shall not sell at retail, or offer for sale at retail, any **consumer** fireworks, novelties, or trick noisemakers **to a person less than eighteen (18) years of age** other than the following:

- (1) Dipped sticks or wire sparklers. However, total pyrotechnic composition may not exceed one hundred (100) grams per item. Devices containing chlorate or perchlorate salts may not exceed five (5) grams in total composition per item.
- (2) Cylindrical fountains.
- (3) Cone fountains.
- (4) Illuminating torches.
- (5) Wheels.
- (6) Ground spinners.
- (7) Flitter sparklers.
- (8) Snakes or glow worms.
- (9) Smoke devices.
- (10) Trick noisemakers, which include:
 - (A) Party poppers.
 - (B) Booby traps.
 - (C) Snappers.
 - (D) Trick matches.

(E) Cigarette loads.

(F) Auto burglar alarms.

(b) A retailer or wholesaler of consumer fireworks may sell consumer fireworks to a person at least eighteen (18) years of age.

(c) A retailer or wholesaler of consumer fireworks other than those listed in subsection (a) may not knowingly or intentionally fail to:

(1) request photographic identification of a purchaser who appears to be less than twenty-five (25) years of age; or

(2) record the following information regarding a sale:

(A) The purchaser's name.

(B) The purchaser's address.

(C) The date of the sale.

(D) The age of the purchaser.

The seller shall keep the record of the sale for not less than one (1) year and shall make the record available to the state fire marshal upon request.

(d) An individual who sells consumer fireworks other than those listed in subsection (a) must be at least eighteen (18) years of age.

SECTION 9. IC 22-11-14-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. ~~(a)~~ Each interstate wholesaler shall keep a record of each sale of **special** fireworks. ~~not approved for sale in Indiana.~~ This record must include:

(1) the purchaser's name;

(2) the purchaser's address; and

(3) the date of the sale.

These records shall be kept for three (3) years and be available for inspection by the fire marshal.

(b) Each resident wholesaler shall post in a prominent location in the wholesaler's place of business a sign that reads as follows:

"Under Indiana law, a resident wholesaler of fireworks may sell fireworks not approved for sale in Indiana only to other resident wholesalers and to purchasers who provide a written and signed assurance that the fireworks are to be shipped out of Indiana within five (5) days of the date of sale. A purchaser who provides a written and signed assurance that fireworks purchased are to be shipped out of Indiana within five (5) days of the date of sale and who then sells the fireworks in Indiana or uses them in Indiana commits a Class A misdemeanor, which is punishable by imprisonment for up to one (1) year and a fine of up to five thousand dollars (\$5,000)."

The state fire marshal shall provide interstate wholesalers with signs for the purposes of this subsection:

SECTION 10. IC 22-11-14-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2006]: **Sec. 11. (a) A user fee, known as the public safety fee, is imposed on retail transactions made in Indiana**

of consumer fireworks.

(b) The person who acquires consumer fireworks in a retail transaction is liable for the public safety fee on the transaction and, except as otherwise provided in this chapter, shall pay the public safety fee to the retailer as a separate added amount to the consideration in the transaction. The retailer shall collect the public safety fee as agent for the state.

(c) The public safety fee shall be paid to the department to be used for the following purposes:

(1) The provision of funds for disaster relief for all Indiana state and local governments under IC 10-19-4-2.

(2) The development and provision of training programs for public safety service providers under IC 10-19-9-3.

(3) The establishment and conduct of advanced training programs in public safety and homeland security subjects under IC 10-19-9-4.

The executive director of the department appointed under IC 10-19-3-1 shall determine the distribution of the funds received by the department from the public safety fee.

(d) The fire prevention and building safety commission shall adopt rules under IC 4-22-2 necessary for the administration of the collection and distribution of the public safety fee monies from retailers as described in subsections (b) and (c) and in section 13 of this chapter.

SECTION 11. IC 22-11-14-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2006]: Sec. 12. (a) The public safety fee is measured by the gross retail income received by a retailer in a retail unitary transaction of consumer fireworks and is imposed at the following rates:

PUBLIC SAFETY FEE	GROSS RETAIL INCOME FROM THE RETAIL UNITARY TRANSACTION	
\$ 0		less than \$0.25
\$ 0.01	at least \$ 0.25	but less than \$0.50
\$ 0.02	at least \$ 0.50	but less than \$0.75
\$ 0.03	at least \$ 0.75	but less than \$1.00
\$ 0.04	at least \$ 1.00	

On a retail unitary transaction in which the gross retail income received by the retail merchant is one dollar (\$1) or more, the public safety fee is four percent (4%) of that gross retail income.

(b) If the public safety fee, computed under subsection (a), results in a fraction of one-half cent (\$0.005) or more, the amount of the public safety fee shall be rounded to the next additional cent.

SECTION 12. IC 22-11-14-13 IS ADDED TO THE INDIANA

1 CODE AS A NEW SECTION TO READ AS FOLLOWS
2 [EFFECTIVE JUNE 1, 2006]: **Sec. 13. (a) A retailer liable for**
3 **collecting the public safety fee from a purchaser shall file a return**
4 **for each calendar month and pay the public safety fees that the**
5 **retailer has collected during that month. A retailer shall file the**
6 **retailer's return for a particular month with the department and**
7 **make the retailer's payment of the public safety fees collected for**
8 **that month to the department not more than thirty (30) days after**
9 **the end of that month.**

10 (b) Instead of the twelve (12) monthly reporting periods
11 required by subsection (a), the department may permit a person to
12 divide a year into a different number of reporting periods. The
13 return and payment for each reporting period is due not more than
14 twenty (20) days after the end of the period.

15 (c) Instead of the reporting periods required under subsection
16 (a), the department may permit a retailer to report and pay the
17 retailer's public safety fees for a period covering a calendar year,
18 if the retailer's public safety fee liability for a calendar year does
19 not exceed seventy-five dollars (\$75). A retailer reporting under
20 this subsection must file the retailer's return and pay the retailer's
21 public safety fee liability not later than the last day of January
22 immediately following the close of the prior calendar year.

23 SECTION 13. IC 22-11-14-14 IS ADDED TO THE INDIANA
24 CODE AS A NEW SECTION TO READ AS FOLLOWS
25 [EFFECTIVE JUNE 1, 2006]: **Sec. 14. An individual who:**

26 (1) is an individual retailer or is an employee, an officer, or a
27 member of a corporate or partnership retailer; and

28 (2) has a duty to remit the public safety fee as described in
29 section 11 of this chapter to the department of homeland
30 security;

31 holds the public safety fees collected in trust for the state and is
32 personally liable for the payment of the public safety fee money to
33 the state.

34 SECTION 14. IC 22-11-14-15 IS ADDED TO THE INDIANA
35 CODE AS A NEW SECTION TO READ AS FOLLOWS
36 [EFFECTIVE UPON PASSAGE]: **Sec. 15. The fire prevention and**
37 **building safety commission shall adopt rules under IC 4-22-2 to**
38 **carry out this chapter.**

39 SECTION 15. [EFFECTIVE UPON PASSAGE] (a)
40 Notwithstanding IC 22-11-14-2(a), as amended by this act,
41 IC 22-11-14-11(d), as added by this act, and IC 22-11-14-15, as
42 added by this act, the fire prevention and building safety
43 commission shall carry out the duties imposed upon it by
44 IC 22-11-14-2(a), as amended by this act, IC 22-11-14-11(d), as
45 added by this act, and IC 22-11-14-15, as added by this act, under
46 interim written guidelines approved by the state fire marshal.

- 1 **(b) This SECTION expires on the earlier of the following:**
 - 2 **(1) The date rules are last adopted under IC 22-11-14-2(a), as**
 - 3 **amended by this act, IC 22-11-14-11(d), as added by this act,**
 - 4 **and IC 22-11-14-15, as added by this act.**
 - 5 **(2) December 31, 2007."**
 - 6 Delete pages 9 through 12.
 - 7 Page 13, delete lines 1 through 32.
 - 8 Renumber all SECTIONS consecutively.
- (Reference is to HB 1099 as printed January 27, 2006.)

Representative Frizzell